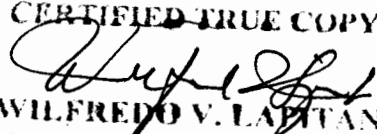




Republic of the Philippines  
**SUPREME COURT**  
 Manila

CERTIFIED TRUE COPY  
  
**WILFREDO V. LAPID**  
 Division Clerk of Court  
 Third Division

AUG 17 2018

**THIRD DIVISION**

**JOHANNE EDWARD B. LABAY,**  
 Petitioner,

**G.R. Nos. 235937-40**

Present:

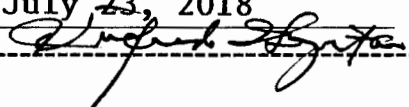
- versus -

VELASCO, JR., *J.*, Chairperson,  
 BERSAMIN,  
 LEONEN,  
 MARTIRES, and  
 GISMUNDO, *JJ.*

**SANDIGANBAYAN, THIRD  
 DIVISION, and PEOPLE OF  
 THE PHILIPPINES,**  
 Respondents.

Promulgated:

July 23, 2018

x----------x

**DECISION**

**VELASCO, JR., *J.*:**

**The Case**

Before the Court is a Petition for Certiorari under Rule 65 of the Rules of Court from the Resolutions dated July 10, 2017<sup>1</sup> and October 19, 2017<sup>2</sup> of the Sandiganbayan, Third Division in Criminal Case Nos. SB-17-CRM-0642 to 0643 and Criminal Case Nos. SB-17-CRM-0644 to 0645. The first assailed resolution denied petitioner's motion for reinvestigation, among others, while the second assailed motion denied petitioner's motion for partial reconsideration of the first assailed resolution.

**The Facts**

The case arose from the complaint dated May 11, 2015 filed by the Field Investigation Office I (FIO I) of the Office of the Ombudsman against petitioner Johanne Edward B. Labay (Petitioner Labay) for his participation in the alleged anomalous utilization of the Priority Development Assistance Fund (PDAF) of former Representative of the 1<sup>st</sup> District of Davao del Sur, Marc Douglas C. Cagas IV (Rep. Cagas IV). The complaint was for

<sup>1</sup> *Rollo*, pp. 68-78. Penned by Presiding Justice/Chairperson Amparo M. Cabotaje-Tang and concurred in by Associate Justices Sarah Jane T. Fernandez and Bernelito R. Fernandez.

<sup>2</sup> *Id.* at 80-89.

violation of Article 217 (Malversation of Public Funds or Property), Article 171 (Falsification of Public Documents), paragraphs (1), (2), (4), and (7), Article 217 in relation to Article 171 (Malversation thru Falsification of Public Documents), all of the Revised Penal Code (RPC), as well as Section 3, paragraphs (a) and (e) of Republic Act (R.A.) No. 3019, as amended. The case was docketed as OMB-C-C-15-0152.<sup>3</sup>

The complaint alleged that Rep. Cagas IV, in conspiracy with other public officials and private individuals such as petitioner Labay, through the Technology Resource Center (TRC), sought the release and transfer of his PDAF in the total amount of Php6,000,000.00 to Farmerbusiness Development Corporation (FDC), which was led by its then president, herein petitioner Labay. However, upon field verification conducted by the FIO I, it appears that the livelihood projects funded by Rep. Cagas IV's PDAF were never implemented and were considered to be "ghost projects."<sup>4</sup>

In a Joint Order dated September 1, 2015, the Ombudsman directed respondents to file their respective counter-affidavits.<sup>5</sup> Several respondents filed their respective counter-affidavits. However, copies of this Order could not be served on petitioner Labay.<sup>6</sup>

According to the Ombudsman, it exerted diligent efforts to serve copies of the September 1, 2015 Joint Order on petitioner Labay through his office and at his last known address. However, the copies were returned unserved because he was no longer employed in that office and he was unknown at the given residential address. As such, the Ombudsman proceeded with the preliminary investigation without any counter-affidavit or participation from petitioner Labay.<sup>7</sup>

In a Resolution dated May 10, 2016,<sup>8</sup> the Ombudsman found probable cause to indict Rep. Cagas IV and his co-respondents, including petitioner Labay, for conspiracy in the commission of two counts of Violation of Section 3(e) of RA 3019, one count of Malversation of Public Funds, and one count of Malversation thru Falsification.

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<sup>3</sup> Id. at 99.

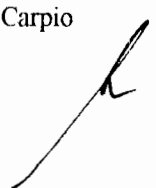
<sup>4</sup> Id. at 100-101; 106-107.

<sup>5</sup> Id. at 109.

<sup>6</sup> Id. at 208.

<sup>7</sup> Id. at 208-210.

<sup>8</sup> Id. at 98-140. Prepared by Graft Investigation & Prosecution Officer III Leilani P. Tagulao-Marquez, reviewed by Acting Director Ruth Laura A. Mella, recommended for approval by Graft Investigation & Prosecution Officer IV M.A. Christian Uy, and approved by Ombudsman Conchita Carpio Morales.



Petitioner alleges that it was unknown to him that preliminary investigations for the charges against him were being conducted by the Ombudsman. According to him, it was only sometime in October 2016 that he learned of the cases when his daughter, Atty. Jo Blanca P.B. Labay, came across the press releases of the Ombudsman wherein petitioner was mentioned as among those who are facing charges.<sup>9</sup>

On October 3, 2016, Atty. Labay, on behalf of her father, attempted to secure information on the cases from the Central Records of the Ombudsman, but she was advised to submit a written request. Accordingly, Atty. Labay sent the Ombudsman a letter dated October 4, 2016 in compliance with the said directive.<sup>10</sup>

In a letter dated October 10, 2016, the Ombudsman replied to Atty. Labay's request and served on her copies of its May 10, 2016 Resolution. At the same time, the Ombudsman directed Atty. Labay to file a motion for reconsideration of the said Resolution within five days from receipt thereof.<sup>11</sup>

Accordingly, petitioner, through Atty. Labay, filed an *Omnibus Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavit and Supporting Documents* dated November 16, 2016.<sup>12</sup> In said Omnibus Motion, petitioner prayed that the Ombudsman conduct a reinvestigation on his alleged participation in the crimes charged and take into consideration his answer and counter-evidence which he would present. He pointed out that he had neither been notified that a complaint had been filed against him nor was furnished a copy of the same. Thus, he argued that he was not afforded an opportunity to present his defense and to participate during the preliminary investigation. More importantly, petitioner prayed that he be furnished copies of the complaint-affidavit and other supporting documents and that he be given time to gather his evidence and submit his answer to the complaint. At the same time, he prayed for the deferment of the filing of any charges against him arising out of the May 10, 2016 Resolution pending the reinvestigation of the case.<sup>13</sup>

In its Order dated November 25, 2016,<sup>14</sup> the Ombudsman denied petitioner Labay's Omnibus Motion, ruling thus:

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<sup>9</sup> Id. at 7.

<sup>10</sup> Id. at 91.

<sup>11</sup> Id. at 95-96.

<sup>12</sup> Id. at 142-156.

<sup>13</sup> Id. at 152-155.

<sup>14</sup> Id. at 158-178.



This Office had exerted diligent efforts to serve on Labay copies of the 1 September 2015 Order directing him to submit his counter-affidavit and the 10 May 2016 Resolution finding him probably guilty of the charges. The same were sent to his office and at his last known address and were returned unserved because he was no longer employed in that office, or was unknown at the given address. There was sufficient compliance with due process.

The filing by Labay of the *Omnibus Motion for Reinvestigation* on 16 November 2016 cured whatever defect in the observance of due process. *Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.*

**WHEREFORE**, this Office, through the undersigned, **DENIES** respondents Marc Douglas C. Cagas IV's *Motion for Reconsideration* dated 10 August 2016; Maria Rosalinda M. Lacsamana's *Motion for Reconsideration* dated 08 August 2016; Consuelo Lilian R. Espiritu's *Motion for Reconsideration* dated 10 August 2016; Marivic V. Jover's *Motion for Reconsideration* dated 13 September 2016; and Johanne Edward B. Labay's *Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavits and Supporting Documents* dated 16 November 2016.

All indictments against them, as originally embodied in the Resolution dated 10 May 2016, **STAND**.

**SO ORDERED.**<sup>15</sup> (Emphasis in the original)

Dissatisfied with this ruling, petitioner Labay filed an *Omnibus Motion for Reconsideration (of the Order dated 25 November 2016) and Deferment of Filing of Information with Reiterative Request for Copies of Complaint-Affidavit and Supporting Documents* dated January 30, 2017.<sup>16</sup> Petitioner essentially reiterated his arguments in his first omnibus motion, but added that the filing of the said omnibus motion did not cure the defects in the Ombudsman's failure to observe due process.<sup>17</sup>

The Ombudsman treated this second Omnibus Motion as a second motion for reconsideration and denied the same for lack of merit in its Order dated February 1, 2017.<sup>18</sup>

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<sup>15</sup> Id. at 173-174.

<sup>16</sup> Id. at 179-200.

<sup>17</sup> Id. at 191-196.

<sup>18</sup> Id. at 202-214.

On March 24, 2017, the Ombudsman filed four (4) Informations before the Sandiganbayan against petitioner Labay and his co-accused.<sup>19</sup>

It was only on March 28, 2017, four days after the Informations had already been filed with the Sandiganbayan, that petitioner Labay was furnished a copy of the Complaint-Affidavit and its supporting evidence.<sup>20</sup>

On April 4, 2017, petitioner Labay received copies of the Informations filed by the Ombudsman with the Sandiganbayan. Immediately thereafter, on April 5, 2017, petitioner Labay filed an Extremely Urgent Motion of even date, arguing that he is entitled to a reinvestigation of the case to prevent injustice against him brought about by the wrongful filing of charges without affording him his right to a complete preliminary investigation.<sup>21</sup>

### **Ruling of the Sandiganbayan**

In the assailed Resolution dated July 10, 2017, the Sandiganbayan denied petitioner's motion, the dispositive portion of which reads:

**WHEREFORE**, the Court –

- (1) **DECLARES** the existence of probable cause in these cases. Accordingly, let warrants of arrest be issued against all the accused except for accused Marc Douglas Chan Cagas IV who had already posted bail;
- (2) **NOTES** the *Urgent Motion for Judicial Determination of Probable Cause With Entry of Appearance* dated April 4, 2017, filed by accused Marc Douglas Chan Cagas IV; and the *Motion To Set Aside No Bail Recommendation in Crim Case No. SB-17-CRM-0644 for Malversation Through Falsification and To Fix the Amount of Bail in Crim Case No. SB-17-CRM-0644 for Malversation Through Falsification* filed by accused Johanne Edward B. Labay; and
- (3) **DENIES** the *Motion For Reinvestigation and To Defer the Issuance of Warrants of Arrest* filed by accused Johanne Edward B. Labay for lack of merit.

**SO ORDERED.**<sup>22</sup>

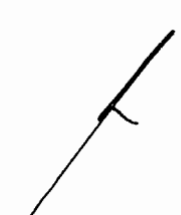
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<sup>19</sup> Id. at 9.

<sup>20</sup> Id. at 9-10.

<sup>21</sup> Id. at 10.

<sup>22</sup> Id. at 255-288.



Aggrieved, petitioner filed a Motion for Partial Reconsideration<sup>23</sup> dated August 3, 2017. However, this was denied for lack of merit and for being *pro forma* in the second assailed Resolution dated October 19, 2017.<sup>24</sup>

Hence, this Petition for *Certiorari*.

### The Petition

In the present petition, petitioner prays for the (1) issuance of a temporary restraining order and/or writ of injunction; (2) nullification and setting aside of the assailed Resolutions; (3) remand of the case to the Office of the Ombudsman for a reinvestigation of petitioner; and (4) suspension of the criminal proceedings with respect to petitioner Labay, pending the resolution of the reinvestigation before the Office of the Ombudsman.

Petitioner argues that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied him the constitutional right to due process by denying his prayer for a reinvestigation. Essentially, petitioner argues that he was not accorded a reasonable opportunity to be heard since he could not have effectively and intelligently moved for the reconsideration of the Ombudsman's May 10, 2016 Resolution due to the latter's failure to furnish him with a copy of the complaint affidavit and its attachments upon which the resolution was based.

In a Resolution<sup>25</sup> dated March 21, 2018, this Court required respondent to file its Comment on the Petition and at the same time issued a temporary restraining order enjoining respondent Sandiganbayan to suspend the criminal proceedings against petitioner Labay.

On April 2, 2018, the People of the Philippines represented by the Office of the Ombudsman, through its counsel, the Office of the Special Prosecutor (OSP), filed an *Entry of Appearance with Comment and Motion to Dissolve the Temporary Restraining Order Issued on 21 March 2018*.<sup>26</sup> It claimed that the Sandiganbayan did not act with grave abuse of discretion in denying petitioner Labay's Motion for Partial Reconsideration. It argued that there was no violation of his constitutional right to due process considering that he was given the opportunity to present countervailing evidence through the Ombudsman's effort to issue subpoenas at his last known addresses, especially since the government substantially complied with the requirements of the law in doing so.<sup>27</sup>

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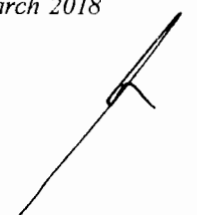
<sup>23</sup> Id. at 61-62.

<sup>24</sup> Id. at 80-89.

<sup>25</sup> Id. at 294.

<sup>26</sup> *Entry of Appearance with Comment and Motion to Dissolve the TRO Issued on 21 March 2018* dated April 17, 2018.

<sup>27</sup> *Rollo*, pp. 14-16.



Aside from the effort exerted in issuing subpoenas, the OSP contended that petitioner Labay was eventually informed of the nature of the accusations against him when he was furnished a copy of the Ombudsman's May 10, 2016 Resolution, in response to which he was able to file an omnibus motion. It further maintains that petitioner Labay had the opportunity to refute the charges against him and present any countervailing evidence he may have, but faults him for hiding on technicalities and insisting that he was denied due process without presenting any evidence to support his claim of having a valid and meritorious defense. In other words, the OSP asserted that petitioner Labay was afforded due process when he filed two motions seeking reinvestigation and reconsideration of the Ombudsman's rulings.<sup>28</sup>

From the arguments presented by the parties, the Court is now faced with the issue of whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner Labay's motion for reinvestigation and ruling that he was not deprived of due process.

### **The Court's Ruling**

The petition is meritorious.

After a judicious review of the records of the case, the Court finds that petitioner's constitutional right to due process was violated when he was not furnished a copy of the complaint affidavit and its attachments during the preliminary investigation.

Section 1, Article III of the 1987 Constitution guarantees the right of every person to due process before they are deprived of their life, liberty, or property. Due process in criminal prosecutions is further emphasized under Section 14, Article III which provides that no person shall be held to answer for a criminal offense without due process of law. The same provision also states that the accused shall be presumed innocent until the contrary is proved and shall enjoy the right to be informed of the nature and cause of the accusation against him.

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<sup>28</sup> Id. at 17-20.



Criminal due process requires that the procedure established by law or the rules be followed to assure that the State makes no mistake in taking the life or liberty except that of the guilty. All the necessary measures must be taken to guarantee procedural due process throughout all stages of a criminal prosecution—from the inception of custodial investigation until rendition of judgment.<sup>29</sup>

A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial.<sup>30</sup>

The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and be formally at risk of incarceration or some other penalty is not a mere formal or technical right. It is a substantive right since the accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense, and the right to an opportunity to avoid a painful process is a valuable right.<sup>31</sup> It is meant to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. Indeed, to deny a person's claim to a preliminary investigation would be to deprive him the full measure of his right to due process.<sup>32</sup>

Administrative Order (A.O.) No. 07 otherwise known as the Rules of Procedure of the Office of the Ombudsman (Ombudsman Rules of Procedure) lays down the procedure to be followed in handling preliminary investigations of criminal complaints brought before the Ombudsman for offenses in violation of R.A. 3019, as amended, R.A. 1379 as amended, R.A. 6713, Title VII, Chapter II, Section 2 of the Revised Penal Code, and for such other offenses committed by public officers and employees in relation to their office.<sup>33</sup> It provides:

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<sup>29</sup> *Benjamin "Kokoy" Romualdez v. The Honorable Sandiganbayan (First Division) and The People of the Philippines represented by Special Prosecution Officer II Evelyn Tagoba Lucero*, G.R. No. 143618-41, July 30, 2002.

<sup>30</sup> The Revised Rules of Criminal Procedure, Rule 112, Section 1.

<sup>31</sup> *Rolito Go y Tambunting v. The Court of Appeals, The Hon. Benjamin V. Pelayo, Presiding Judge, Branch 168, Regional Trial Court, NCJR Pasig, M.M., and People of the Philippines*, G.R. No. 101837, February 11, 1992.

<sup>32</sup> *Reynolan T. Sales v. Sandiganbayan (4th Division), Ombudsman, People of the Philippines and Thelma Benemerito*, G.R. No. 143802, November 16, 2001.

<sup>33</sup> Administrative Order No. 07, Rule II, Section 1.





Section 3. Preliminary investigation; who may conduct. Preliminary Investigation may be conducted by any of the following:

- 1) Ombudsman Investigators;
- 2) Special Prosecuting Officers;
- 3) Deputized Prosecutors;
- 4) Investigating Officials authorized by law to conduct preliminary investigations or
- 5) Lawyers in the government service, so designated by the Ombudsman.

Section 4. Procedure – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondents desire any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.



g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

Section 3, Rule 112 of the Revised Rules of Criminal Procedure also provides similar guidelines in the conduct of preliminary investigation, to wit:

**Section 3.** *Procedure.* — The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.



(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (3a)

It is clear from the foregoing that an accused in a criminal case has the right to be informed of the charges against him,<sup>34</sup> to submit a counter-affidavit, and to have access to and examine all other evidence submitted by the complainant.<sup>35</sup>

In the case before Us, a complaint was filed by the FIO I of the Office of the Ombudsman against petitioner Labay for representing the Farmerbusiness Development Corporation (FDC) in the alleged anomalous utilization of the PDAF of Rep. Cagas IV.<sup>36</sup> The Ombudsman directed those charged to file their respective counter-affidavits,<sup>37</sup> but copies of this Order could not be served on petitioner Labay.<sup>38</sup> It appears that the Ombudsman attempted to serve copies of the September 1, 2015 Joint Order on petitioner Labay at his office at the National Anti-Poverty Commission (NAPC) and at his last known residence. However, the copies were returned unserved because he was no longer employed in that office and he was unknown at the given residential address. As such, the Ombudsman proceeded with the preliminary investigation without any counter-affidavit or participation from petitioner Labay.<sup>39</sup>

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<sup>34</sup> The 1987 Philippine Constitution, Article III, Section 14.

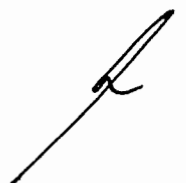
<sup>35</sup> *Senator Jinggoy Ejercito Estrada v. Office of the Ombudsman, Field Investigation Office, Office of the Ombudsman, National Bureau of Investigation and Atty. Levito D. Baligod*, G.R. Nos. 212140-41, January 21, 2015.

<sup>36</sup> *Rollo*, p. 99.

<sup>37</sup> *Id.* at 109.

<sup>38</sup> *Id.* at 208.

<sup>39</sup> *Id.* at 208-210.



Thereafter, the Ombudsman found probable cause to indict petitioner and his co-respondents for conspiracy in the commission of two counts of Violation of Section 3(e) of RA 3019, one count of Malversation of Public Funds, and one count of Malversation thru Falsification.

Upon learning from press releases of the Ombudsman about the criminal charges against him,<sup>40</sup> petitioner Labay, through his daughter, Atty. Labay, attempted to secure information on the cases from the Central Records of the Ombudsman. Upon being advised to submit a written request, Atty. Labay sent the Ombudsman a letter dated October 4, 2016 in compliance with the said directive.<sup>41</sup> In response to Atty. Labay's letter request, the Ombudsman replied to Atty. Labay's request through a letter dated October 10, 2016 and served on her copies of its May 10, 2016 Resolution. In the letter, the Ombudsman directed Atty. Labay to file a motion for reconsideration of the said Resolution within five days from receipt thereof.<sup>42</sup>

Petitioner filed an *Omnibus Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavit and Supporting Documents* dated November 16, 2016,<sup>43</sup> praying, among others, that a reinvestigation be conducted on his behalf, asserting that he was not afforded an opportunity to present his defense and to participate during the preliminary investigation since he had neither been notified that a complaint had been filed against him nor was furnished a copy of the same. Petitioner also prayed that he be furnished copies of the complaint-affidavit and other supporting documents and that he be given time to gather his evidence and submit his answer to the complaint.<sup>44</sup> However, the Ombudsman denied petitioner Labay's Omnibus Motion, ruling that his right to due process had not been violated since he had the opportunity to be heard when he filed the Omnibus Motion.<sup>45</sup>

Aggrieved, petitioner Labay filed another Omnibus Motion essentially reiterating his arguments in his first omnibus motion, but additionally argued that the filing of the first omnibus motion did not cure the defects in the Ombudsman's failure to observe due process when it failed to serve on him copies of the complaint affidavit.<sup>46</sup> The Ombudsman treated this second Omnibus Motion as a second motion for reconsideration and denied the same for lack of merit in its Order dated February 1, 2017.<sup>47</sup>

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<sup>40</sup> Id. at 7.

<sup>41</sup> Id. at 91.

<sup>42</sup> Id. at 95-96.

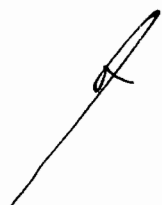
<sup>43</sup> Id. at 142-156.

<sup>44</sup> Id. at 152-155.

<sup>45</sup> Id. at 173-174.

<sup>46</sup> Id. at 191-196.

<sup>47</sup> Id. at 202-214.



Thereafter, on March 24, 2017, the Ombudsman filed four (4) Informations before the Sandiganbayan against petitioner Labay and his co-accused.<sup>48</sup> It was only on March 28, 2017 that petitioner Labay was furnished a copy of the Complaint-Affidavit and its supporting evidence.<sup>49</sup>

Upon receiving copies of the Informations filed by the Ombudsman, petitioner Labay immediately filed an Extremely Urgent Motion with the Sandiganbayan arguing that he is entitled to a reinvestigation of the case to prevent injustice against him brought about by the wrongful filing of charges without affording him his right to a complete preliminary investigation.<sup>50</sup>

The Sandiganbayan, however, sustained the Ombudsman's position in the assailed Resolution dated July 10, 2017, ruling that petitioner's right to due process was not violated since he was afforded reasonable opportunity to address the charges against him when he filed two motions with the Ombudsman. The Sandiganbayan ruled, thus:

The Court finds accused Labay's motion for reinvestigation bereft of merit.

The essence of due process is that a party is afforded a reasonable opportunity to be heard in support of his case. What the law abhors and prohibits is the absolute absence of the opportunity to be heard. When the party seeking due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail.

Admittedly, there is no showing that accused Labay was served a copy of the order requiring him to file his counter-affidavit. The record shows, however, that on October 4, 2016, accused Labay wrote the Office of the Ombudsman requesting information on case numbers and titles of the cases it referred to in its press release where his name appears. In reply to the said letter, the Office of the Ombudsman confirmed that accused Labay is a respondent in two (2) cases and furnished him copies of the Resolutions dated May 10, 2016 and June 3, 2016. It also reminded accused Labay that he has five (5) days from notice within which to file a motion for reconsideration.

Thus, on November 16, 2016, accused Labay filed a Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavits and Supporting Documents assailing the Office of the Ombudsman's Resolution dated May 10, 2016, finding probably cause to indict him. The said motion was denied by the Office of the Ombudsman in its Order dated November 25, 2016 upon the following ratiocination:

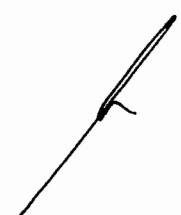
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<sup>48</sup> Id. at 9.

<sup>49</sup> Id. at 9-10.

<sup>50</sup> Id. at 10.



Thereafter, accused Labay filed an Omnibus Motion for Reconsideration and Deferment of Filing of Information assailing the above order. In denying the said motion, the Office of the Ombudsman pointed out that while accused Labay asserted that he did not commit the crimes imputed to him and that he did not participate in any conspiracy in the commission of the crimes, he prayed that the Office of the Ombudsman conduct a reinvestigation, furnish him a copy of the complaint, allow him to gather evidence and submit counter-affidavit. Further, the Office of the Ombudsman held that when accused Labay filed his second motion, he already exhausted his remedy under Section 7(a), Rule II of the Rules of Procedure of the Office of the Ombudsman which allows the filing of only one (1) motion for reconsideration or reinvestigation.

The above circumstances unerringly show that accused Labay was accorded due process by filing two (2) motions before the Office of the Ombudsman.

We disagree.

There is no dispute that the Ombudsman was unable to serve copies of the complaint or of its September 1, 2015 Joint Order on petitioner Labay prior to or even during the preliminary investigation of the case. This was never denied by the OSP in its Comment, stating thus:

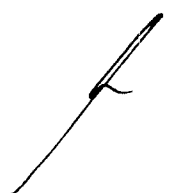
20. By *Joint Order* dated 01 September 2015, the Office of the Ombudsman directed therein respondents (including Labay) to file their respective counter-affidavits.

21. Despite earnest efforts, copies of the *Joint Order* could not be served in the last known or given addresses of Cunanan, Semillano, Carrasco, Reyes, and **herein petitioner Labay**, after they have been noted to be unknown in said addresses, or had moved out and left no forwarding address.<sup>51</sup> (emphasis in the original)

As pointed out by petitioner, the Ombudsman only tried to effect service of the order to file his counter affidavit on petitioner on one instance, albeit to two different addresses. However, this service failed since petitioner was no longer employed at his former office at NAPC, as confirmed by the letter sent by the NAPC Secretary and Lead Convenor, and since he was no longer residing at the residential address where the order was sent.

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<sup>51</sup> Id. at 11.



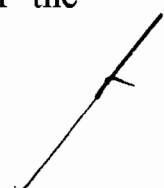
In its Comment, the OSP seeks refuge in paragraph (e), Section 4 of the Ombudsman Rules of Procedure which provides that in cases where the respondents cannot be served with the order to file their counter-affidavit, or having been served but does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.

While the Ombudsman was correct in resolving the complaint based on the evidence presented in accordance with Paragraph (e), Section 4 of the Ombudsman Rules of Procedure, the situation, however, effectively changed when petitioner made himself available to the Ombudsman when he requested access to the case records. The Ombudsman had a clear opportunity to furnish petitioner with copies of the complaint affidavit and its supporting documents. Instead, it merely decided to furnish petitioner with a copy of its May 10, 2016 Resolution.

Even assuming that the Ombudsman was merely complying with Atty. Labay's request for information when it responded with the case titles and docket numbers of the cases pending against petitioner Labay, it should have exercised its duty to inform petitioner of the charges filed against him by furnishing him copies of the complaint affidavit and its supporting documents. Or at the very least, it should have directed and allowed petitioner to access these records at its office. This, however, was not done by the Ombudsman.

We also cannot subscribe to the Sandiganbayan's justification that petitioner was afforded reasonable opportunity to address the charges against him since he was able to file a motion for reinvestigation with the Ombudsman. By the mere fact that petitioner was not yet even furnished a copy of the complaint affidavit at the time he received the Ombudsman's May 10, 2016 Resolution, it is clear that he could not effectively and sufficiently address the allegations against him. Petitioner Labay should not be blamed for being unable to raise any substantive defense in either the omnibus motions he filed with the Ombudsman since he had not even seen any of the allegations filed against by the FIO. More importantly, he could not have been expected to seek appropriate evidence to support his defense when he was not even given any access to the documents submitted by the FIO in support of its complaint.

In fact, the violation of petitioner's constitutional right to due process is made even more evident when the Ombudsman unceremoniously denied his request to be furnished copies of the complaint affidavit and its supporting documents in the first omnibus motion that he filed, and reiterated in his second omnibus motion. In both orders denying the two omnibus motions, the Ombudsman seemingly ignored petitioner's requests and effectively denied petitioner of his right to secure copies of the complaint affidavit. This should not be tolerated.



Unfortunately, the Sandiganbayan committed grave abuse of discretion when it failed to grant petitioner Labay's *Extremely Urgent Omnibus Motion* despite the glaring violations committed by the Ombudsman. The Sandiganbayan should have recognized these patent violations and ordered the remand of the case to the Ombudsman for the conduct of a proper preliminary investigation with respect to petitioner Labay's participation in the crimes charged. Instead, it chose to turn a blind eye towards the injustice committed against petitioner.

Time and again, the Court has held that suppression of evidence, regardless of its nature, is enough to violate the due process rights of the accused.<sup>52</sup> In the present case, it was not only the prosecution's evidence which was withheld from petitioner. In denying petitioner Labay's multiple requests for copies of the complaint affidavit, the Ombudsman deprived him of his right to sufficiently and reasonably know the charges and accusations against him. This is a patent violation of his constitutional right to due process.

In *Duterte v. Sandiganbayan*,<sup>53</sup> this Court ordered the dismissal of the criminal case against the accused when they were not sufficiently apprised of the charges against them during preliminary investigation, thus:

We have judiciously studied the case records and we find that the preliminary investigation of the charges against petitioners has been conducted not in the manner laid down in Administrative Order No. 07.

In the 12 November 1991 Order of Graft Investigator Manriquez, petitioners were merely directed to submit a point-by-point comment under oath on the allegations in Civil Case No. 20,550-91 and SAR No. 91-05. The said order was not accompanied by a single affidavit of any person charging petitioners of any offense as required by law. They were just required to comment upon the allegations in Civil Case No. 20,550-91 of the Regional Trial Court of Davao City which had earlier been dismissed and on the COA Special Audit Report. Petitioners had no inkling that they were being subjected to a preliminary investigation as in fact there was no indication in the order that a preliminary investigation was being conducted. If Graft Investigator Manriquez had intended merely to adopt the allegations of the plaintiffs in the civil case or the Special Audit Report (whose recommendation for the cancellation of the contract in question had been complied with) as his basis for criminal prosecution, then the procedure was plainly anomalous and highly irregular. As a consequence, petitioners constitutional right to due process was violated. (citations omitted)

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<sup>52</sup> *Antonio Lejano v. People of the Philippines*, G.R. No. 176389, December 14, 2010, citing *Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>53</sup> G.R. No. 130191, April 27, 1998.





While the *Duterte* case is not on all fours with the case before Us, We find that the Ombudsman's failure to furnish petitioner Labay with copies of the complaint affidavit and its supporting documents despite the latter's numerous attempts and requests to secure the same is more severe as it gravely endangers petitioner's right to liberty through no fault of his own. Undeniably, petitioner Labay's receipt of the May 10, 2016 Resolution is not equivalent to receipt of the complaint affidavit and its supporting documents.

The OSP's assertion in its comment that petitioner deliberately evaded the Ombudsman's attempts to serve its orders on him is purely hypothetical and is not supported by any concrete proof. There is also no merit in the OSP's position that it was incumbent on petitioner Labay to justify his whereabouts during the time that the Ombudsman was attempting service of the subpoena on him since no law or regulation requires an accused in a preliminary investigation to submit himself to the Ombudsman or at the very least update the latter of his latest address. The burden should not be placed on the accused since it is the State which has the responsibility to use its resources for the proper implementation of the law. To rule otherwise would effectively curtail the constitutionally protected rights of the people to be secure with their life, liberty and property.


**WHEREFORE**, the petition is **GRANTED**. The Resolutions dated July 10, 2017 and October 19, 2017 issued by the Sandiganbayan, Third Division in Criminal Case Nos. SB-17-CRM-0642 to 0643 and Criminal Case Nos. SB-17-CRM-0644 to 0645 are hereby **ANNULLED** and **SET ASIDE**. The Office of the Special Prosecutor is **ORDERED** to file motions to withdraw Information in the aforescribed criminal cases.

**SO ORDERED.**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice

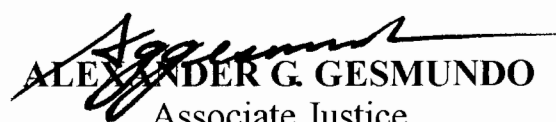
WE CONCUR:

  
**LUCAS P. BERSAMIN**  
 Associate Justice

*See dissenting opinion*


  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

  
**SAMUEL B. MARTIRES**  
 Associate Justice

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice


**ATTESTATION**

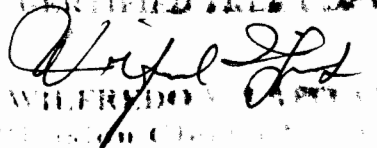
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
 Senior Associate Justice  
 (Per Section 12, R.A. 296,  
 The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY  
  
 WILFREDO  
 Clerk of Court